DRN-3316073

The complaint

Mr B complains that Zurich Assurance Ltd gave him unsuitable investment advice. His complaint is brought on his behalf by a solicitor.

What happened

Mr B sought investment advice from Zurich in 1996. He was young, living with his parents, and he wanted to start some form of regular savings, potentially for a house purchase in the future.

Zurich recommended he invest £50 each month in a “Maximum Investment Plan” (MIP), a 10-year endowment assurance policy. The investment consisted of investment in a managed fund and a life policy.

Mr B stopped making the monthly payments towards the end of 2002, and in May 2003 he surrendered the policy, receiving around £3,000.

Mr B’s representative complained that Mr B did not have an emergency savings fund, that the MIP was too risky for him, and that he didn’t have any requirement for life cover.

Zurich was satisfied that the MIP was suitable for Mr B’s circumstances at the time, and that he was fully aware of the nature of the MIP, including the risks involved.

Our investigator recommended that the complaint should be upheld. He didn’t think the MIP was suitable for Mr B, given the illustration said that the growth would be equivalent to 4.2%. He thought Mr B would have preferred to put his money in a savings account, which would have paid a higher rate of interest without the need to take any risk.

Zurich didn’t agree so the complaint was passed to me.

My provisional decision

I also thought the complaint should be upheld, but for a different reason. I said:

> *Mr B was young and didn’t have any investment experience. His priority was to provide a cash sum in the future for a possible house deposit by starting to save regularly. He had around £200 available income each month and decided he wanted to save £50. It’s not clear what discussion took place around his attitude to risk, but the box on the fact find was ticked in the middle which Zurich says meant he had a “balanced” attitude to risk.*
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> *I can see that the advisor discussed protecting Mr B’s earnings against sickness or an accident. But I can’t see that having a sum set aside to cover emergencies – such as being unable to work – was discussed. I think it would have been important for Mr B to have some readily realisable savings before he committed to a longer-term investment. Whilst the MIP could have been surrendered at any time, the illustration shows how a surrender before year 10 was likely to mean Mr B would get back less*

> *than he invested. I think it would have been important for him to have some money set aside in a savings account which he could access without notice and without penalty. I can't see that this was discussed or recommended.*
>
> *I also think, as a first time investor who didn't even have a bank deposit account, it was likely to have been more difficult for him to understand the concept of investment risk, and whether he was prepared to put his capital at risk. The underlying fund in the MIP was a managed fund. I can see from the illustration that around 82% was invested in UK and overseas equities and property, and around 18% was invested in fixed interest and cash. I don't think this was suitable for Mr B. I don't think he would have gone ahead with the investment if he'd realised how much of his money was exposed to equity risk. I say this in particular because of his lack of experience and understanding about these types of investment.*
>
> *Overall, and on balance, I think Mr B should have been advised to build up an emergency savings fund in a bank deposit account before he committed any money to longer term investment.*

And I explained what I thought Zurich needed to do to put things right. I said Zurich should pay compensation, using an average rate from fixed rate bonds as a benchmark.

Zurich didn't agree. It said, in summary, that:

- The recommendation to invest in the MIP was recommended alongside a £50 per month saving into a deposit account.
- But the MIP may not have been suitable because Mr B may not have intended to keep the plan for the full 10 years. There's no evidence that the advisor warned Mr B of the potential consequences if he took the funds early.
- Using fixed rate bonds as a benchmark for redress does not reflect a rate that would have been available to Mr B because he didn't have a lump sum to invest. Had Mr B set up a regular savings account, he would have achieved something around the Bank of England base rate. So it's more appropriate to use the Bank of England base rate plus 1% to calculate the redress.
- Tax should be deducted from the redress to accurately reflect what Mr B would have achieved.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Zurich now agrees that the MIP may not have been appropriate for Mr B. As it agrees the plan was mis-sold, it just leaves me to decide what Zurich needs to do to put things right.

I accept what Zurich says about fixed rate bonds generally accepting lump sums, rather than regular contributions. But the purpose of using the fixed rate bond index is to provide a reasonable indication of what sort of return a consumer might have achieved when they weren't looking to take any risk with their money. So I think it's a close enough fit to Mr B's aims and objectives for it to provide fair compensation.

Zurich also suggests it should deduct income tax from the compensation award. I agree that tax may apply on the interest award and that Zurich may choose to deduct that tax. But

I don't agree that tax should be applied to the investment growth element of the award. Here, the average return from fixed rate bonds is a benchmark being used as a proxy for what I think Mr B would have achieved as an investment return, bearing in mind his attitude to risk. This service does not order taxes to be applied to a benchmark investment return.

Putting things right

To compensate Mr B fairly, Zurich must:

- Compare the performance of Mr B's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Zurich should also pay interest as set out below.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Maximum Investment Plan	No longer in force	Average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum that Mr B paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr B wanted to achieve a reasonable return. He was assessed as having a balanced attitude to investment risk. But, had the need for a readily accessible savings account been discussed, I think it's more likely than not that he would have used the £50 a month investment for a savings account, without risking any of his capital.

- The average rate for the fixed rate bonds would be a fair measure given Mr B's circumstances and objectives. It does not mean that Mr B would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.

HM Revenue & Customs requires Zurich Assurance Ltd to take off tax from the interest part of this award. Zurich Assurance Ltd must give Mr B a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold this complaint. Zurich Assurance Ltd should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 March 2022.

Elizabeth Dawes
Ombudsman